

**REPORT OF THE
ADMINISTRATIVE RULES AND REGULATIONS SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL**

December 16, 2011

Co-Chairs:

The Subcommittee on Administrative Rules and Regulations met at 10:00 a.m. on Monday, December 5, 2011, in Room 171 of the State Capitol. The following committee members attended: Senator Percy Malone, Co-Chair; Representative James Word, Co-Chair; Senator Randy Laverty, Vice Co-Chair; Representative Jonathan Barnett, Vice Co-Chair; Senators Jimmy Jeffress, Kim Hendren, Jack Crumbly, and Johnny Key; Representatives Eddie Cheatham, Tommy Lee Baker, Randy Stewart, Les "Skip" Carnine, Kelley Linck, and Terry Rice. Other legislators attended as follows: Senators Gene Jeffress, Bill Sample, and David Wyatt; Representatives Denny Altes, Jeff Wardlaw, Sheilla Lampkin, Billy Gaskill, Mike Patterson, Betty Overbey, Buddy Lovell, Duncan Baird, John Burris, David Fielding, James Ratliff, Marshall Wright, Andrea Lea, Jerry Brown, Nate Steel, and Lane Jean.

1. The committee reviewed the following revisions or repeals to the Department of Finance and Administration, Alcoholic Beverage Control rules and regulations filed pursuant to Ark. Code Ann. § 10-3-309:

- a. Amendment to Section 1.19(14), Liquor Manufacturer Permit. This allows Arkansas based distillers to sell for off premises consumption, on any day of the week permitted by law, spirituous liquors that they manufacture.
- b. Repeal of Section 1.19(40), Native Brewery Permit. This repeals this section as it had been inadvertently repeated in another rule.
- c. Section 1.19(40), Retail Native Beer Permit. This authorizes the permit holder to sell at retail beer produced by an Arkansas Native Brewer as defined at Ark. Code Ann. § 3-5-103(2) and to sell malt liquor produced by an Arkansas Native Brewer as defined at Ark. Code Ann. § 3-5-1403(6). The native beer and native malt liquor may be sold for consumption either on or off the premises. This is to comply with Act 1805 of 2003.
- d. New Regulation Section 1.19(44), Hotel or Large Event Facility Private Club Permit. This rule provides a short description of a hotel or large event facility permit per Act 1194 of 2011.
- e. Amendment to Section 1.51, Postponement of Scheduled ABC Board Hearings. This prohibits a person from obtaining a continuance of a scheduled ABC Board hearing

on short notice, unless emergency circumstances arise. No request for a continuance will be considered that is made after the Friday before a scheduled hearing.

f. Amendment to Section 1.79(33), Concealed Handguns. This amends the definition of a restaurant, as the sixty percent food sales ratio as enumerated in Ark. Code Ann. § 5-73-306(a)(12) and (13) was repealed by Act 294 of 2009.

g. Amendment to Section 2.19, Size of Alcoholic Beverage Containers. This modifies the container size for beer and malt liquor that may be sold by manufacturers to Arkansas wholesalers to include container sizes of six and eight tenths (6.8) ounces.

h. Amendment to Section 2.28(4), Gifts and Services to Retailers Prohibited. This reduces to writing (with some modifications) the federal regulations regarding point of sale advertising material and consumer advertising specialties that may be given or sold to retailers by wholesalers.

i. Amendment to Section 2.28(10), Wholesalers Furnishing Outside Signs to Retailers Governed by Federal Regulations. This regulation adds to the federal regulations governing the furnishing of outside signs to retailers by wholesalers in that it further delineates what wholesalers and retailers may and may not do regarding outside signs.

j. Amendment to Section 3.19(2), Samples Prohibited. This allows retail permit holders to give alcoholic beverages to charitable or non-profit organizations for charitable or non-profit functions.

k. Amendment to Section 3.19(2), Samples Prohibited. This authorizes permit holders at hotels that have beer and wine permits only to give samples of alcoholic beverages to guests.

l. Amendment to Section 3.19(5), Sale of Controlled Beverages for other than Cash, Check, or Nationally Recognized Credit Card Prohibited – Gift Certificates Allowed. This prohibits gift cards for alcoholic beverages from being bartered in exchange for services rendered to a retailer of alcoholic beverages.

m. Amendment to Section 3.19(10)B, Employment of Certain Persons Prohibited. This authorizes 16 and 17 year olds to be employed at retail grocery establishments, but does not allow them to handle alcoholic beverages.

n. Repeal of Section 4.17, Failure to Maintain Food Service Ratio. This section is repealed.

o. Amendment to Section 5.17.2, Private Club Restaurant Operations. This requires holders of private club permits that are restaurants to serve food at all times alcoholic beverages are dispensed on the permitted premises.

p. New Regulation Section 5.50, Hotel or Large Event Facility Private Club permit for “Dry” Areas Only. This rule describes a hotel or large events facility private club permit per Act 1194 of 2011.

q. New Regulation Section 5.51, Hotel or Motel In-Room Hospitality Units for “Dry” Area Hotels or Motels under Act 1194 of 2011. This new section creates a new manner of dispensing alcoholic beverages in a private club hotel permit in a dry area per Act 1194 of 2011.

Mr. Milton Lueken announced that the following revisions or repeals would be pulled down. Mr. Lueken indicated that many of these will need legislative clarifications during the next regular session of the General Assembly.

a. New Regulation Section 1.33(6)D, Distance of Certain Permitted Establishments from Churches and Schools. This prohibits all alcoholic beverage permitted outlets except retail liquor stores from being located within 50 feet of a church or school building.

b. Repeal of Section 2.20, Application for Sales Agent Permits. This section is repealed.

c. Repeal of Section 2.22, Sales Agent to Possess Qualifications of Principal. This section is repealed.

d. Repeal of Section 2.23, Sales Agent to Represent Only Principal in Accordance with Permit. This section is repealed.

e. Repeal of Section 2.24, Insurance and Duration of Sales Agent Permit. This section is repealed.

f. Repeal of Section 2.25, Exhibition of Permits. This section is repealed.

g. Repeal of Section 2.26, Surrender of Permit Upon Leaving Employ of Employer. This section is repealed.

h.. Repeal of Section 2.27, Suspension and Revocation of Sales Agent Permit. This section is repealed.

i. Repeal of Section 3.19(4)D, The repeal of this regulation regarding sale of alcoholic beverages to insane or mentally handicapped persons is in response to Act 98 of 2011.

j. New Regulation Section 3.19(14). This prohibits the sale or dispensing of alcoholic beverages below cost.

December 14, 2011 Meeting

The Subcommittee on Administrative Rules and Regulations met at 10:00 a.m. on Wednesday, December 14, 2011, in Room 171 of the State Capitol. The following committee members attended: Senator Percy Malone, Co-Chair; Representative James Word, Co-Chair; Senator Randy Laverty, Vice Co-Chair, and Representative Jonathan Barnett, Vice Co-Chair; Senators David Johnson and Michael Lamoureux; Representatives Tommy Lee Baker, Johnnie Roebuck, Randy Stewart, and Linda Tyler. Other legislators attended as follows: Senators Bill Sample, David Wyatt, Larry R. Teague, Cecile Bledsoe, and Jonathan Dismang; Representatives Gary Deffenbaugh, Donna Hutchinson, Duncan Baird, Buddy Lovell, John Catlett, Homer Lenderman, Uvalde Lindsey, Jerry Brown, Greg Leding, Nate Bell, Betty Overbey, John Burris and Stephanie Malone.

1. The Subcommittee reviewed the following rules filed pursuant to Ark. Code Ann. § 10-3-309.

ARKANSAS DEVELOPMENT FINANCE AUTHORITY (Mac Dodson, Sara Oliver)

- a. 2012 HOME Program Policy and Operations Manual
- b. 2012 Financial Adjustment Factor (FAF) and Below Market Interest Rate (BMIR) Program Policies
- c. 2012 Multifamily Housing Minimum Design Standards
- d. 2012 Housing Credit Qualified Allocation Plan
- e. Compliance Monitoring Policies and Procedures Manual for the Low Income Housing Tax Credit Program

ARKANSAS ECONOMIC DEVELOPMENT COMMISSION (Michael Almond, Kurt Naumann)

- a. Regional Economic Development Partnership Rules

DEPARTMENT OF EDUCATION (Mark White)

- a. Expenditure Requirements of Arkansas School Districts
- b. Rules Governing Ethical Guidelines and Prohibitions for Educational Administrators, Employees, Board Members, and Other Parties
- c. Calculation of Miscellaneous Funds
- d. Regulatory Basis of Accounting
- e. Loans and Bonds Applications
- f. Rules Governing the Arkansas Financial Accounting and Reporting System and Annual Training Requirements
- g. Rules Governing Publicly Funded Educational Institution Audit Requirements
- h. Required School Board Training

BOARD OF REGISTRATION FOR FORESTERS (John Shannon)

- a. ABORF Rules

DEPARTMENT OF HEALTH, ENGINEERING SECTION (Robert Brech)

- a. Public Water Systems

DEPARTMENT OF HEALTH, ENVIRONMENTAL HEALTH (Robert Brech)

- a. Repeal of Rules and Regulations pertaining to Private, Public, and Parochial Schools
- b. Repeal of Rules and Regulations Pertaining to Recreational Lots
- c. Food Establishments

DEPARTMENT OF HEALTH, CENTER FOR PUBLIC HEALTH PRACTICE (Robert Brech)

- a. Cancer Registry

DEPARTMENT OF HEALTH, PHARMACY SERVICES AND DRUG CONTROL (Robert Brech)

- a. List of Controlled Substances

DEPARTMENT OF HIGHER EDUCATION (Janet Lawrence)

- a. Out-of-State Veterinary Medical Education Program

DEPARTMENT OF HUMAN SERVICES, BEHAVIORAL HEALTH SERVICES (Breck Hopkins)

- a. RSPMI Provider Certification Amendment 2

DEPARTMENT OF HUMAN SERVICES, CHILD CARE AND EARLY CHILDHOOD EDUCATION (David Griffin, Erasmo Reyes)

- a. Minimum Licensing Standards for Child Welfare Agencies

DEPARTMENT OF HUMAN SERVICES, COUNTY OPERATIONS (Larry Crutchfield)

- a. SNAP Aged/Disabled Resource Limit

**DEPARTMENT OF HUMAN SERVICES, FINANCE AND
ADMINISTRATION (Jeff Wood, Carla Daniels)**

- a. Revisions required by Act 98 of 2011 to DHS Policy 1094, DHS/DRC Cooperation Rule
- b. Revisions required by Act 98 of 2011 to DHS Policy 1027, Volunteer Employment and Personnel Policy Rule
- c. Revisions required by Act 98 of 2011 to DHS Administrative Procedures Manual Chapter 801, Hiring Procedures Rule

**DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES (Jeff Wood,
Regina Strickland)**

- a. Official Notice -008-11 – 2012-ICD-9
- b. Rehabilitative Services for Persons with Mental Illness (RSPMI) Update No. 3-11

NATURAL RESOURCES COMMISSION (Randy Young, Crystal Phelps)

- a. Repeal of Rules and Procedures for Claiming Tax Credit Title 9
- b. Premium Biosolids Incentives Cost Share Program Title 9

STATE BOARD OF NURSING (Sue Tedford)

- a. Chapter 9; Glucagon Administration

PUBLIC SERVICE COMMISSION (John Bethel)

- a. Conservation and Energy Efficiency Programs, Section 12

REAL ESTATE COMMISSION (Gary Isom)

- a. Broker Price Opinion

2. The following rule was deferred to the next subcommittee meeting:

DEPARTMENT OF EDUCATION (Mark White)

- a. Rules Governing the School Worker Defense Program and the School Worker Defense Program Advisory Board

3. **The subcommittee recommended that the following two rules be transmitted to the Insurance Department to review and that subsequently, the rules be placed on the next subcommittee agenda:**

ARKANSAS BURIAL ASSOCIATION BOARD (Amy Goode)

- a. Rule 4; Expenses Amendment
- b. Proposed Rule 47; Use of Old Business Surplus Funds

4. **The following rule was pulled down by the agency for further discussion and to meet with the staff to clarify issues concerning the agency's fee authority. It will subsequently be placed on a later agenda.**

DEPARTMENT OF CAREER EDUCATION (James Smith, Janice Hanlon)

- a. Program Policies for the Administration of the General Educational Development

5. **The subcommittee took no action on the following rule:**

RESIDENTIAL BUILDING CONTRACTORS COMMITTEE (Vicki Pickering, Gregory Crow)

- a. Revisions to Rules and Regulations

6. **The subcommittee recommended that the Bureau staff communicate to agencies when there is a concern regarding statutory rulemaking authority and share those concerns with the subcommittee.**

Respectfully submitted,

Senator Percy Malone, Co-Chair

Representative James Word, Co-Chair